

10 MAY 2007



UNITED STATES PATENT AND TRADEMARK OFFICE

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NEW YORK NY 10023

In re Application of :
CADUFF et al. :
Application No.: 10/580,209 : DECISION
PCT No.: PCT/CH2004/000077 :
Int. Filing Date: 10 February 2004 :
Priority Date: 02 December 2003 :
Attorney Docket No.: U 016310-9 :
For: A DEVICE AND METHOD FOR MEASURING :
A PROPERTY OF LIVING TISSUE :

This is a decision on applicants' petition under 37 CFR 1.47(a) filed 05 April 2007 in the United States Patent and Trademark Office (USPTO). The petition is **DISMISSED** without prejudice.

BACKGROUND

On 10 February 2004, applicants filed international application PCT/CH2004/000077, which designated the United States and claimed a priority date of 02 December 2003. A copy of the international application was communicated from the International Bureau to the USPTO on 16 June 2005. The thirty-month period for paying the basic national fee in the United States expired at midnight on 02 June 2006.

On 22 May 2006, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee and the surcharge under 37 CFR 1.492(h) for filing any of the search fee, the examination fee, or the oath or declaration after the date of the commencement of the national stage.

On 09 February 2007, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) was required.

On 05 April 2007, applicants filed the instant petition under 37 CFR 1.47(a).

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17(h); (2) factual proof that the missing joint inventor refuses to execute the application or

cannot be reached after diligent effort; (3) a statement of the last known address of the missing inventor; and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

Item (1) has been met. However, items (2)-(4) have not been met and do not appear to have been attempted to be met: no factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort has been provided; no statement of the last known address of the missing inventor has been provided; and no oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor has been provided.

CONCLUSION

For the above reasons, applicants' petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

A proper response must be filed within a time limit of ONE MONTH from the date of this decision or within the time remaining in the response set forth in the NOTIFICATION mailed 09 February 2007, whichever is longer. No extension of this time limit may be granted under 37 CFR 1.136, but the period for response set in the NOTIFICATION mailed 09 February 2007 may be extended under 37 CFR 1.136(a).

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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